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ER 9116

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Enrollment and Review Change to LB 155

3 The following changes, required to be reported for publication
4 in the Journal, have been made:

5 1. In the Quandahl amendment, AM3363:

6 a. Section 4 has been struck and the following new section
7 inserted:

8 "Sec. 4. Section 44-19,116, Revised Statutes Supplement,
9 2003, is amended to read:

10 44-19,116. (1) (a) A title insurance agent may operate as an
11 escrow, security, settlement, or closing agent subject to the
12 requirements of subdivisions (b) through ~~(e)~~ (f) of this
13 subsection.

14 (b) All funds deposited with the title insurance agent in
15 connection with an escrow, settlement, closing, or security deposit
16 shall be submitted for collection to or deposited in a separate
17 fiduciary trust account or accounts in a qualified financial
18 institution no later than the close of the next business day in
19 accordance with the following requirements:

20 (i) The funds shall be the property of the person or persons
21 entitled to them under the provisions of the escrow, settlement,
22 security deposit, or closing agreement and shall be segregated for
23 each depository by escrow, settlement, security deposit, or closing
24 in the records of the title insurance agent in a manner that
25 permits the funds to be identified on an individual basis; and

26 (ii) The funds shall be applied only in accordance with the
27 terms of the individual instructions or agreements under which the
28 funds were accepted.

29 (c) Funds held in an escrow account shall be disbursed only
30 pursuant to a written instruction or agreement specifying how and
31 to whom such funds may be disbursed.

32 (d) Funds held in a security deposit account shall be
33 disbursed only pursuant to a written agreement specifying:

34 (i) What actions the indemnitor shall take to satisfy his or
35 her obligation under the agreement;

36 (ii) The duties of the title insurance agent with respect to
37 disposition of the funds held, including a requirement to maintain
38 evidence of the disposition of the title exception before any
39 balance may be paid over to the depositing party or his or her
40 designee; and

41 (iii) Any other provisions the director may require.

42 (e) (i) Disbursements may be made out of an escrow, settlement,
43 or closing account only if funds in an amount at least equal to the
44 disbursement have first been received and if the funds received are
45 in one of the following forms:

46 (A) Lawful money of the United States;

47 (B) Wired funds when unconditionally held by the title
48 insurance agent;

1 (C) Cashier's checks, certified checks, bank money orders, or
2 teller's checks issued by a federally insured financial institution
3 and unconditionally held by the title insurance agent; and

4 (D) United States treasury checks, federal reserve bank
5 checks, federal home loan bank checks, State of Nebraska warrants,
6 and warrants of a city of the metropolitan or primary class.

7 (ii) For purposes of this subdivision, federally insured
8 financial institution means an institution in which monetary
9 deposits are insured by the Federal Deposit Insurance Corporation
10 or National Credit Union Administration.

11 (f) A title insurance agent who holds funds relating to an
12 exchange under section 1031 of the Internal Revenue Code shall
13 provide written disclosure, at or before closing, to the person
14 whose funds are being held, on a separate paper with no other
15 information on the paper, which states that:

16 (i) Such services performed by a title insurance agent are not
17 regulated by the Department of Banking and Finance, the Department
18 of Insurance, or any other agency of the State of Nebraska or by
19 any agency of the United States Government;

20 (ii) The safety and security of such funds is not guaranteed
21 by any agency of the State of Nebraska or of the United States
22 Government or otherwise protected by law; and

23 (iii) The owner of such funds should satisfy himself or
24 herself as to the safety and security of such funds.

25 (2) ~~On and after January 1, 2004, every title insurance agent~~
26 ~~shall have an annual audit made of its escrow, settlement, closing,~~
27 ~~and security deposit accounts, conducted by a certified public~~
28 ~~accountant on a calendar year basis at its expense within ninety~~
29 ~~days after the close of the previous calendar year. The title~~
30 ~~insurance agent shall provide a copy of the audit report to each~~
31 ~~title insurer which it represents. The director may adopt and~~
32 ~~promulgate rules and regulations setting forth the minimum~~
33 ~~threshold level at which an audit would be required, the standards~~
34 ~~of audit, and the form of audit report required. The director may~~
35 ~~also require a title insurance agent to provide a copy of its audit~~
36 ~~report to the director. Title insurance agents who are attorneys~~
37 ~~and who issue title insurance policies as part of their legal~~
38 ~~representation of clients are exempt from the requirements of this~~
39 ~~subsection. However, the title insurer may, at its expense,~~
40 ~~conduct or cause to be conducted an annual audit of the escrow,~~
41 ~~settlement, closing, and security deposit accounts of the attorney.~~
42 ~~Attorneys who are exclusively in the business of title insurance~~
43 ~~are not exempt from the requirements of this subsection.~~

44 ~~(3) If the title insurance agent is appointed by two or more~~
45 ~~title insurers and maintains fiduciary trust accounts in connection~~
46 ~~with providing escrow, closing, or settlement services, the title~~
47 ~~insurance agent shall allow each title insurer reasonable access to~~
48 ~~the accounts and any or all of the supporting account information~~
49 ~~in order to ascertain the safety and security of the funds held by~~
50 ~~the title insurance agent.~~

51 ~~(4) (3) Nothing in the Title Insurance Agent Act shall be~~

1 deemed to prohibit the recording of documents prior to the time
2 funds are available for disbursement with respect to a transaction
3 if all parties consent to the transaction in writing.

4 ~~(5)~~ (4) Nothing in this section is intended to amend, alter,
5 or supersede other sections of the act or the laws of this state or
6 the United States regarding an escrow holder's duties and
7 obligations.

8 ~~(6)~~ (5) The director may prescribe a standard agreement for
9 escrow, settlement, closing, or security deposit funds."; and

10 b. On page 11, lines 7 and 8, "and sections 44-1984 and
11 44-19,116" has been struck and "section 44-1984" inserted; and in
12 line 8 "and section 44-19,116, Revised Statutes Supplement, 2003,"
13 has been inserted after the last comma.

14 2. On page 1, the matter beginning with "section" in line 1
15 through line 4 has been struck and "sections 44-1993, 44-19,106,
16 and 76-238, Reissue Revised Statutes of Nebraska, section 44-1984,
17 Revised Statutes Supplement, 2002, and section 44-19,116, Revised
18 Statutes Supplement, 2003; to change provisions relating to
19 coverage issued by title insurers; to provide liability for title
20 insurers; to require disclosures by title insurance agents; to
21 eliminate audit requirements; to provide for enforcement of the
22 Title Insurance Agent Act; to change and eliminate provisions
23 relating to agricultural leases, mortgages, deeds, and other
24 instruments affecting real estate; to repeal the original sections;
25 and to outright repeal sections 76-261 to 76-263 and 76-265,
26 Reissue Revised Statutes of Nebraska." inserted.

27 (Signed) Ray Mossey, Chairperson